IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2007

CORAM :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.885 of 2007
(Appeal No.885 of 2007)

Commissioner of Income-tax,
Chennai. .. Appellant

Vs.

S.Mohammad Dhurabudeen .. Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'C', Chennai in I.T.A. No.1498/Mds/04 dated 20.02.2007, for the assessment year 2001-2002.against the order of the commissioner Income -Tax Appeals IX, chennai.34 dated 9.3.04 and made in ITA.No.118/2003-04 against the order of the Income Tax officer Ward I (3), Tambaram dated 29.8.03 and made in PA.NO/GIR No.13-10806 for the Assessment year 2001-2002.

For Appellant : Mr.J.Narayanaswamy,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'C', Chennai in I.T.A. No.1498/Mds/04 dated 20.02.2007, raising the following common substantial question of law:-

> "Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition of Rs.2,35,012/- made under section 40A(3) towards the cash payments / purchase by the assessee?"

2. The facts leading to the above substantial question of law are as under:-

The assessee is an individual engaged in the job work of stitching of

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clothes for exporters. The relevant assessment year is 2001-2002 and the corresponding accounting year ended on 31.03.2001. The assessee filed his Return of income on 09.01.2002 admitting an income of Rs.1,43,830/-. The Return was processed on 16.10.2002 determining a refund of Rs.57,940/-. Later, the matter was taken up for scrutiny and notice under Section 143 (2) of the Income-tax Act ("Act" in short) was served on the assessee on 21.10.2002. The Assessing Officer completed the assessment under Section 143(3) determining the total income at Rs.7,15,550/-. While completing the assessment, the Assessing Officer made additions and disallowance under Section 40A(3) of the Act. The assessee himself voluntarily offered for assessment an amount of Rs.2,50,000/- on the ground that he is not maintaining any books of account and also he is unable to produce any material or evidence to prove the case. Aggrieved by the disallowance and other additions made by the Assessing Officer, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) deleted the disallowance made under Section 40A(3) of the Act. In respect of other additions, he confirmed the order and allowed the appeal partly. Aggrieved by the deletion of the disallowance made under Section 40A(3) of the Act, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the Revenue's appeal and confirmed the order of the Commissioner of Income-tax (Appeals). Hence the present tax case by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the Tribunal is wrong in deleting the addition of Rs.2,35,012/- made under Section 40A(3) towards cash payments / purchase by the assessee. Further it is submitted that the Tribunal is wrong in holding that, when the income of the assessee is estimated and no deduction claimed on purchases, provision of Section 40A(3) need not be applied.

4. Heard the counsel. In the present case, the Assessing Officer verified the assessee's bank account and on verification, it was found that certain payments are made by cheques and hence the assessee was directed to explain as to why the provision of Section 40A(3) should not be applied for making disallowance of 20% on the sum of Rs.15,30,060/-. The assessee offered no explanation for the same. With regard to applicability of Section 40A(3) of the Act, the assessee filed letters dated 13.08.2003 and 21.08.2003 and pleaded that:-

a) He had not maintained his accounts properly;
b) Bills and other evidences were misplaced at the time of shifting of his factory premises and that therefore
c) Offering to accept an addition of Rs.2,50,000/- to buy peace with the Department and to avoid penal and prosecution proceedings.

Hence the Assessing Officer made addition of Rs.2,50,000/- in the total income of the assessee. The assessee is a tailor and doing the job work and the percentage of profit cannot be fixed abnormally in the said business. Even though there are no books of account maintained properly, the best course would be to estimate the income that is appropriate to the kind of income that is generated in this line of business, otherwise it would lead to absurd result of arriving at a very high percentage of net

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profit or gross profit which is never seen in this type of business. When such disallowances are made, it should not exceed the overall probable percentage of profit. The disallowance under Section 40A(3) should not be applied mechanically. One has to see the genuineness of the transaction and the nature of the payments, and the nature of business also is very important. In this case, the assessee did not claim any deduction with regard to the purchase made by him. So, having considered the nature of business and the assessee's acceptance before the Assessing Officer and the lack of positive evidence from the Assessing Officer to make an addition that can be sustained, it is reasonable to accept what has been offered by the assessee voluntarily of Rs.2,50,000/- for the purpose of assessment. As an addition of Rs.2,50,000/- has been made in this case and also no further deduction claimed in respect of the purchases by the assessee, no further disallowance could be made. When the gross profit rate is applied, that will take care of everything and there is no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee. Taking note of the fact that the assessee is a tailor and is doing tailoring on job work basis and also he has not maintained the accounts and vouchers properly, the assessee had correctly and voluntarily offered the said amount for assessment. The Tribunal also relied on the Allahabad High Court judgment in the case of Commissioner of Income-tax Vs. Banwari Lal Banshidhar [1998] 229 ITR 229 (All.) wherein it was held as follows:-

> "The question for consideration is when no deduction was sought and allowed under section 40A(3), was there any need to go into section 40A(3) and rule 6DD(j). We see force in the view taken by the Appellate Tribunal that when the income of the assessee was computed applying the gross profit rate and when no deduction was allowed in regard to the purchases of the assessee, there was no need to look into the provisions of section 40A(3) and rule 6DD(j). No disallowance could have been made in view of the provisions of section 40A (3) read with rule 6DD(j) as no deduction was allowed to and claimed by the assessee in respect of the purchases. When the gross profit rate is applied, that would take care of everything and there was no need for the Assessing Officer to make scrutiny of the amount incurred on the purchases by the assessee."

Applying the above principle, the Tribunal is right in its view that no disallowance could be made. So, both the first appellate authority as well as the Tribunal have considered the relevant facts and came to the correct conclusion that no disallowance could be made by the Assessing Officer. The Revenue is also unable to bring to the notice of this Court any contra judgment or any compelling reason to take a different view. The concurrent finding given by both the authorities below is based on valid materials and evidence. In the case of Commissioner of Income-tax Vs. P.Mohanakala [2007] 291 ITR 278 (SC), the Supreme Court held that whenever there is a concurrent finding by the authorities below, no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

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5. In view of the foregoing reasons, no substantial question of law arises for consideration of this Court and accordingly the tax case is dismissed. No costs.

sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal III floor,
   Rajaji Bhavan, Besant Nagar,
   Chennai.90.

2. The Commissioner of Income-Tax,
   Chennai.

3. The Commissioner of Income-tax (Appeals) IX,
   Chennai-600 034.

4. The Income-tax Officer,
   Ward I(3), Tambaram.

+ 1 cc to Mrs.Pushya Sitaraman, Advocate SR.NO.42047

VC(co)
RD 6.8.07

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